

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

ELEANOR AHENAKEW LAMERE,

Petitioner,

v.

CHINOOK, MONTANA, et al.

Defendants.

CV-18-97-GF-BMM-JTJ

**ORDER ADOPTING MAGISTRATE
JUDGE’S FINDINGS AND
RECOMMENDATIONS**

Plaintiff Eleanor Ahenakew Lamere (“Lamere”) filed a petition seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.)

United States Magistrate Judge John Johnston issued an Order and Findings and Recommendations in this matter on July 11, 2018. (Doc. 2.) Judge Johnston recommended that the Court dismiss Lamere’s petition as unexhausted. (Doc. 2 at 6.)

The Court reviews *de novo* findings and recommendations to which objections are made. 28 U.S.C. § 636(b)(1)(C). Portions of findings and recommendations to which no party specifically objects are reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Where a party's objections constitute perfunctory responses argued in an attempt to engage the district court in a relitigation of the same

arguments set forth in the original response, however, the Court will review for clear error the applicable portions of the findings and recommendations. *Rosling v. Kirkegard*, 2014 WL 693315 *3 (D. Mont. Feb. 21, 2014) (internal citations omitted).

Lamere filed a “supplement” on July 11, 2018. (Doc. 3.) The document advances similar claims as Lamere’s original petition. Nothing in the supplement bears on whether Lamere, who challenges a state court judgment, has exhausted her claims in state court. Therefore, the Court will review for clear error.

Federal courts may not grant a writ of habeas corpus brought by a person in state custody pursuant to a state court judgment unless “the applicant has exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A).

Lamere was convicted and sentenced for Partner/Family Member Assault in the Great Falls Municipal Court. (Doc. 1 at 2) Lamere appealed her conviction to Montana’s Eighth Judicial District Court, and the Montana Supreme Court. *Id.* A review of the Montana Supreme Court Docket indicates that Lamere’s appeal remains pending. *State v. E. Lamere*, DA 18-0087, Not of App. (filed Feb. 8, 2018). The Montana Supreme Court has extended the due date for Lamere’s opening brief to August 15, 2018. *State v. E. Lamere*, DA 18-0087, Order (filed July 9, 2018).

Finding no clear error, the Court adopts Magistrate Judge Johnston's Findings and recommendations in full.

ORDER

Accordingly, **IT IS ORDERED** that Magistrate Judge Johnston's Findings and Recommendations (Doc. 2) is **ADOPTED IN FULL**.

IT IS FURTHER ORDERED that Lamere's Petition (Doc. 1) is **DISMISSED WITHOUT PREJUDICE** as unexhausted.

The Clerk of Court shall enter by separate document a judgment of dismissal.

A certificate of appealability is **DENIED**.

DATED this 30th day of July, 2018.



Brian Morris
United States District Court Judge